



ATTORNEY DOCKET NO. RTI 143 /1915-13879US01

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

In the Application of:

Buskirk, et al.

Serial No.: 09/942,537

Filed: August 29, 2001

For: "Soft and Calcified Tissue  
Implants"

Group Art Unit: 3738

Examiner: Alvin J. Stewart

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. BOX 1450, Arlington, VA 22313-1450, on this date:

January 27, 2005

Donald J. Pochopien  
Registration No. 32,167  
Attorney for Applicants

PETITION UNDER 37 C.F.R. § 1.137(a)  
TO REVIVE AN UNAVOIDABLY ABANDONED APPLICATION

Mail Stop Petition  
Commissioner for Patents  
P.O. BOX 1450  
Arlington, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.137(a), Applicants hereby petition the Commissioner for Patents to revive the above identified application that went unavoidably abandoned due to failure to respond to a communication that was received by Applicants' attorney after its final (30 day) due date. This Petition is accompanied by the following supporting documents :

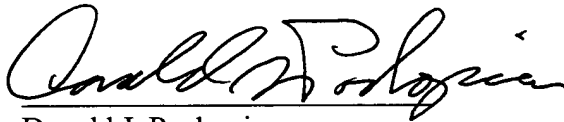
- (1) The reply(s) required to the outstanding Office action or notice
  - (i) Amendment After Payment of the Issue Fee; and
  - (ii) Submission Of Corrected Drawings;
- (2) A check in the amount of \$1500 to cover the petition fee under 37 C.F.R. § 1.17(l);

- (3) A statement of facts, showing that the entire delay in filing the required reply until the piling of a grantable petition was unavoidable; and
- (4) Declaration of Attorney, Donald J. Pochopien, as to the facts surrounding that unavoidable delay.

Respectfully submitted,

**MCANDREWS, HELD & MALLOY, LTD.**

By



Donald J. Pochopien

Registration No. 32,167

Attorney of Record

500 West Madison, 34th Floor

Chicago, Illinois 60661

(312) 775-8133

Dated: January 27, 2005

J:\open\Djp\Regeneration Technologies\USPTO\13897US01\Pet to Revive Unavoidable.doc

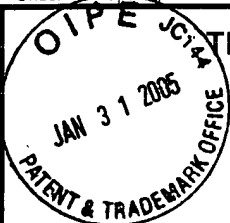
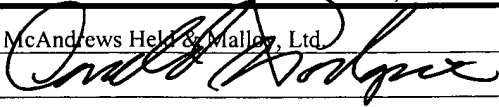
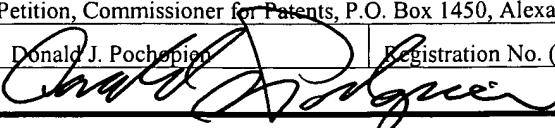
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JW

PTO/SB/21 (09-04)

Approved for use through 7/31/2006

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction act of 1995, no persona are required to respond to a collection of information unless it displays a valid OMB control number.

 <b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	09/942,537	
	Filing Date	August 29, 2001	
	First Named Inventor	Buskirk, et al.	
	Art Unit	3738	
	Examiner Name	Alvin J. Stewart	
Total Number of Pages in This Submission	91	Attorney Docket Number	RTI 143/1915-13879US01
<b>ENCLOSURES (check all that apply)</b>			
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached - \$1500.00 <input checked="" type="checkbox"/> Petition Under 37 C.F.R. §1.137(a) to Revive An Unavoidably Abandoned Application <input checked="" type="checkbox"/> Statement Of Facts Under 37 C.F.R. §1.137(a) To Corroborate That The Entire Delay In Filing The Reply Up To The Filing Of A Grantable Petition Was Unavoidable, with Exhibits A-J attached thereto <input checked="" type="checkbox"/> Pochopien Declaration Providing Facts Supporting The Statement Of Facts Under 37 C.F.R. §1.137(a) To Corroborate That The Entire Delay In Filing The Reply Up To The Filing Of A Grantable Petition Was Unavoidable, with Exhibits A-J attached thereto <input checked="" type="checkbox"/> Amendment After Payment Of The Issue Fee	<input checked="" type="checkbox"/> Submission Of Corrected Formal Drawings <input checked="" type="checkbox"/> 8 Sheets of Formal Drawings <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Return-Receipt Postcard <input type="checkbox"/> Other Enclosure(s) (please identify below):	
Remarks			
<b>SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT</b>			
Firm	McAndrews Held & Malloy, Ltd.		
Signature			
Printed Name	Donald J. Pochopien, Reg. No. 32,167		
Date	January 27, 2005		
<b>CERTIFICATE OF MAILING</b>			
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 01/27/2005.			
Name (Print/type)	Donald J. Pochopien	Registration No. (Attorney/Agent)	32,167
Signature		Date	01/27/2005

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004.

Fees pursuant to the consolidated Appropriates Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL  
for FY 2005**

Complete if Known

Application Number 09/942,537

Filing Date August 29, 2001

First Named Inventor Buskirk, et al.

Examiner Name Alvin J. Stewart

Art Unit 3738

Attorney Docket No. RTI 143/1915-13879US01

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 1500.00

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☐ Deposit Account Deposit Account Number: 13-0017 Deposit Account Name: McAndrews Held & Malloy

For the above-identified deposit account, the Director is hereby authorized to (check all that apply)

☐ Charge Fee(s) indicated below☐ Charge Fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fees(s) ☐ Credit any overpayments  
under 37 CFR 1.16 and 1.17

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid(\$)
	Fee (\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	Fee(\$)	Small Entity Fee(\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

	Fee(\$)	Small Entity Fee(\$)
Each claim over 20, or for Reissues, each claim over 20 and more than in the original patent.	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims      Extra Claims      Fee(\$)      Fee Paid (\$)

\_\_\_\_\_ -20 or HP \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

Multiple Dependent Claims

Fee      Fee Paid (\$)

\_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20

Indep. Claims      Extra Claims      Fee(\$)      Fee Paid (\$)

\_\_\_\_\_ -3 or HP \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3

**3.. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets      Extra Sheets      Number of each additional 50 or fraction thereof      Fee(\$)      Fee Paid(\$)

\_\_\_\_\_ -100 \_\_\_\_\_ /50 \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other: Petition Under 37 CFR 1.137(a) To Revive An Unavoidably Abandoned Application 1500.00

**SUBMITTED BY**

Signature

Registration No.  
(Attorney/Agent)

32,167

Telephone

(312)775-8000

Name (print/type)

Donald J. Pochopien

Date

January 27, 2005



ATTORNEY DOCKET NO. RTI 143 /1915-13879US01

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

In the Application of:

Buskirk, et al.

Serial No.: 09/942,537

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January 27, 2005

Donald J. Pochopien  
Registration No. 32,167  
Attorney for Applicants

STATEMENT OF FACTS UNDER 37 C.F.R. § 1.137(a)  
TO CORROBORATE THAT THE ENTIRE DELAY IN FILING THE REPLY  
UP TO THE FILING OF A GRANTABLE PETITION WAS  
UNAVOIDABLE

Mail Stop Petition  
Commissioner for Patents  
P.O. BOX 1450  
Arlington, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.137(a), Applicants hereby Provide the Commissioner for Patents with their statement of facts to corroborate Applicants' claim that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable."

1. The undersigned attorney of record, Donald J. Pochopien, is a partner at the law offices of McAndrews held & Malloy Ltd. and registered (Reg. No. 32,167) to practice

before the USPTO. He is also the attorney and person at McAndrews Held & Malloy that is most familiar with the facts surrounding the prosecution of this application. [Pochopien Declaration at ¶1.]

2. At the offices of McAndrews Held & Malloy Ltd. (MHM) it is the business practice in the mail room that “[o]ne individual will date stamp (on the back of the envelope) all incoming mail with the exception of magazines and post cards.” Another individual sorts the date stamped mail for delivery. Thereafter, “[t]he prosecution mail (anything from the USPTO) will be delivered [to prosecution docketing] immediately after delivering Accounting’s mail.” Finally, it is the business practice at McAndrews Held & Malloy that mail delivery begin “no later than 10:00 am”:

After date stamping and sorting the U.S. mail, ARO’s internal; messenger service will deliver all mail. Delivery of the mail will begin first to the Accounting Department, then to the Prosecution [docketing] Dept. and then to the employees of MHM no later than 10:00 am. ARO should send an e-mail to “Entire Firm” if the mail delivery is delayed.

[Exhibit A: Excerpt from Procedure Manual at MHM on “U.S. Mail Services, Incoming;” Pochopien Declaration at ¶2; emphasis in original]

3. For the above-identified application, the undersigned attorney signed the issue fee documents and caused the issue fee to be paid and transmitted by mail to the USPTO on December 14, 2004. [Pochopien Declaration at ¶3.]

4. On December 15, 2004, unbeknownst to the undersigned attorney, the attached Official Communication was allegedly transmitted by mail to the undersigned attorney at the offices of McAndrews Held & Malloy, Ltd. [See Exhibit B: Official Communication (FORM PTO-1631) dated 12/15/04 at page 1; Pochopien Declaration at ¶4.]

5. On page 2, the Official Communication states that the drawings received on 08/29/01 have an inconsistency between the Figures 1A, 1F and the Brief Description of the Drawings, and that Applicant is required to correct this inconsistency “within a time period of **ONE MONTH or THIRTY (30) DAYS, whichever is longer**, from the mailing date of this Notice” and that “**NO EXTENSION OF THIS TIME PERIOD MAY BE GRANTED UNDER EITHER 37 CFR 1.136 (a) OR (b).**” [See Exhibit B: Official Communication dated 12/15/04 at page 2.]

6. Based upon the mailing date of December 15, 2004 that is on the face of the Official Communication, the final **UNEXTENDABLE** date for Response to the Official Communication was January 15, 2005. [See Exhibit B: Official Communication dated 12/15/04 at pages 1 and 2.]

7. However, on January 18, 2005, the Official Communication dated December 15, 2004 was first received in the mail room of McAndrews Held & Malloy Ltd. [Pochopien Declaration at ¶7.]

8. As evidenced by the date stamp of “RECEIVED JAN 18 2005” on the face of the Official Communication of December 15, 2004, the Official Communication was first received and seen by the docketing department at McAndrews Held & Malloy on January 18, 2005. [Exhibit B: date stamp on the Official Communication at page 1; Pochopien Declaration at ¶ 8; and Exhibit C: Listings of MHM Docketing procedures.]

9. As part of their processing of the Official Communication, the docketing department at McAndrews Held & Malloy entered the response due date of “Jan 15, 2005” on the face of the Official Communication and indicated that it was “Final.” [Exhibit B: date on lower right of the Official Communication; Exhibit C: Listings of MHM Docketing procedures; Pochopien Declaration at ¶9.]

10. On the afternoon of January 18 2005, Helen Hughes, the supervisor of the docketing paralegals, personally brought the file for this application to the undersigned attorney and explained that the docketing department had just received the Official Communication of 12/15/04 on today's date (01/18/05) and that the unextendable response date had already passed. [Pochopien Declaration at ¶ 10.]

11. On the next day (Wednesday, January 19, 2005), the undersigned attorney informed the assignee and client, Regeneration Technologies Inc., by e-mail what had occurred, advised them of two different ways to proceed (either refiling the application off of a co-pending application or via the more costly petition to revive the abandoned application) along with the costs, and asked them to advise me on how they would like to proceed. [Exhibit D: E-mail from Donald Pochopien (MHM) to Maurie Baker (RTI) of 01/19/05 at 2:38 PM; Pochopien Declaration at ¶11.]

12. On that same day (Wednesday, January 19, 2005), RTI responded back to the undersigned attorney in an e-mail and inquired about time for the PTO to act and costs. [Exhibit E: E-mail from Maurie Baker (RTI) to Donald Pochopien (MHM) of 01/19/05 at 3:53 PM.]

13. Later that same day (Wednesday, January 19, 2005), the undersigned attorney replied to RTI by e-mail and informed them where the additional costs arise in filing the petition to revive. Because an answer was not immediately forthcoming, the undersigned attorney also informed RTI that there is a diligence requirement and that we must proceed diligently if we wish to file a petition to revive the application. [Exhibit F: E-mail from Donald Pochopien (MHM) to Maurie Baker (RTI) of 01/19/05 at 4:01 PM; Pochopien Declaration at ¶13.]

14. On the morning of the next day (Thursday, January 20, 2005), Maurie Baker of RTI advised the undersigned attorney that she would have to present the options to upper



management at RTI to obtain a decision. [The need for an upper management decision is based upon the Sorbanes-Oxley law recently passed by Congress.] She also inquired about the time frames for each of the options and my time for acting. [Exhibit G: E-mail from Maurie Baker (RTI) to Donald Pochopien (MHM) of 01/20/05 at 8:49 AM; Pochopien Declaration at ¶14.]

15. That same morning (Thursday, January 20, 2005), the undersigned attorney responded by e-mail within the hour and advised RTI, based upon his experience, of his best estimates of the time for response from the PTO for each of the two options, likelihood of success for each option, and the time that he would need to draft the appropriate filings. [Exhibit H: E-mail from Donald Pochopien (MHM) to Maurie Baker (RTI) of 01/20/05 at 9:21 PM; Pochopien Declaration at ¶15.]

16. On the following Monday morning (January 24, 2005), RTI elected a course of action and authorized the undersigned attorney to proceed with reviving this unavoidably abandoned application. [Exhibit I: E-mail from Maurie Baker (RTI) to Donald Pochopien (MHM) of 01/24/05 at 10:58 AM; Pochopien Declaration at ¶16.]

17. On Monday, January 24, 2005, the undersigned attorney pushed other work aside and drafted the responses required under the Official Communication. Specifically, the undersigned attorney drafted the "Submission of Corrected Drawings" and the "Amendment After Payment of the Issue Fee." [Pochopien Declaration at ¶ 17.]

18. On Tuesday, January 25, 2005, the undersigned attorney pushed other work aside and drafted the "Petition Under 37 C.F.R. 1.137(a) To Revive An Unavoidably Abandoned Application" and began drafting the Statement of Facts collecting facts drafting this document (**"STATEMENT OF FACTS UNDER 37 C.F.R. § 1.137(a) TO CORROBORATE THAT THE ENTIRE DELAY IN FILING THE REPLY UP TO THE FILING OF A GRANTABLE PETITION WAS UNAVOIDABLE"**).

19. On Wednesday, January 26, 2005, the undersigned attorney continued drafting this document and began drafting the Pochopien Declaration that provides the underlying factual support for many of the statements made herein. [Pochopien Declaration at ¶19.]

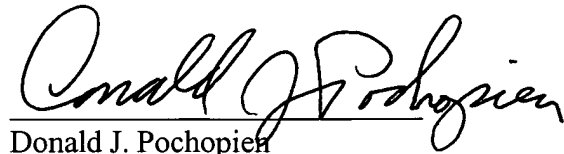
20. On Thursday, January 27, 2005, the undersigned attorney completed the Pochopien Declaration and this "Statement of Facts . . ." and sent both documents along with the proposed responses, as e-mail attachments, to the assignee RTI for their review. [Pochopien Declaration at ¶ 20; Exhibit J: E-mail from Donald Pochopien to Benjamin Sanders (RTI) on 01/27/05 at 10:06AM.]

21. For all these reasons, the undersigned attorney and the assignee at all times acted diligently, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable.

Respectfully submitted,

MCANDREWS, HELD & MALLOY, LTD.

By



Donald J. Pochopien  
Registration No. 32,167  
Attorney of Record  
500 West Madison, 34th Floor  
Chicago, Illinois 60661  
(312) 775-8133

Dated: January 27, 2005

J:\open\Djp\Regeneration Technologies\USPTO\13897US01\Statement of Facts Re Petition.doc

should never approach MHM employees and ask them if they can go to trial with them.

### Expectations

Anticipate long hours under pressure. Expectations include knowledge of copy quality and timeliness. Faxes will need to be distributed as quickly as possible. Supplies must be monitored, re-ordered, re-stocked and readily available. Messenger services may be requested. You must keep a meter reading of all copies made for billing purposes. Oftentimes, you will be asked to re-stock refrigerators, snacks, medicinal supplies, etc. (depending on the particular circumstances). You may get requests from attorneys, paralegals, secretaries, or others and those requests will vary greatly. Be prepared for the unusual and unexpected. Paralegals often attend trial during the day and will ask for copy jobs to be completed in their absence. If the situation becomes overwhelming, call The MHM Manager and ask for some advice or additional assistance.

### Expenses

A cash advance will be given to you by the firm for miscellaneous expenses. The amount will be determined according to length of stay and anticipated needs and will be determined and approved by a MHM Manager or other MHM employee. Reasonable expenses include an occasional book or magazine or local entertainment such as a movie but this should not be abused. Other expenses will include food, and personal hygiene products such as toothpaste. You may have to provide tips to service persons but oftentimes tips are built-in to the hotel cost so you must seek guidance and direction from an attorney, paralegal or secretary. Occasionally you will be requested to purchase food or sundry items. You will be held accountable for the cash advance you are given so it is imperative that you keep all receipts and track all cash transactions. Upon your return to the office, you will be required to complete an expense report. If you should require more cash prior to or before your return, please contact the MHM Manager for instruction. If you should spend any personal money for reasonable expenses, you will be reimbursed.

## L. U.S. MAIL SERVICES

### Incoming

U.S. Mail is delivered Monday through Friday by "On the Fly" between 7:45 a.m. and 8:45 a.m. The mail will be brought in one or more locked bag(s). The "On the Fly" messenger will be given unlocked replacement bag(s). The key to unlock the bags can be obtained from any ARO Manager. Mail should never be opened. The two individuals who process the incoming US Mail will sign a log sheet after date stamping and sorting. The mail will be unlocked in the presence of two or more ARO personnel. One individual will date stamp (on the back of the envelope) all incoming mail with the exception of magazines and postcards. The other individual will sort the mail by three areas - 35<sup>th</sup> floor, 34<sup>th</sup> floor east, and 34<sup>th</sup> floor west. Any instruction for special handling whether permanent or

temporary should be noted on the mail cart(s). Unidentified mail, foreign mail and checks are delivered to Accounting in a locked bag. If no one is present in Accounting, the bag may be given to MHM Management (Hugh Washburn, Jim Boettger, Ann-Marie Jensen or Jan Wiesner). Accounting's locked bag of mail will be the first mail delivered. The prosecution mail (anything from the USPTO) will be delivered immediately after delivering Accounting's mail. Returned mail should be given to Ann-Marie Jensen unless the sender's initials or name is indicated in the return address portion in which case the mail would be given directly to the sender. After date stamping and sorting the U.S. Mail, ARO's internal messenger service will deliver all mail. Delivery of mail will begin first to the Accounting Department, then to the Prosecution Dept, and then to the employees of MHM no later than **10:00 a.m.** ARO should send an e-mail to "Entire Firm" if the mail delivery is delayed.

#### Outgoing

Outgoing U.S. Mail can be either dropped off in the ARO Center on the 34<sup>th</sup> Floor or will be retrieved from the designated bins located throughout the firm. All outgoing mail should be received and processed in the mailroom no later than **5:00 p.m.** The mail must be checked to make sure it is sealed, has proper postage and international stamp. A messenger from the Building Messenger Center retrieves the mail between 5:15 and 5:30 and holds it at the Building Messenger Center to be picked up by "On the Fly" courier who delivers it to the U.S. Post Office. All international airmail packages weighing more than three (3) pounds must be delivered to a U.S. Postal agent in person. The copy center must be informed by **5:00 p.m.** if such service is required.

#### Certified Mail

If proof of mailing is required for the certified mail, please complete the necessary forms for the Postal Service. Blank copies of those forms are available in the mailroom. The copy center must be informed by **5:00 p.m.** if such service is required.

#### Express Mail

Express Mail Runs will be completed by a CSR in the evening at **6:00 p.m.** The client should complete the necessary forms for the Postal Service and inform ARO by **5:30 p.m.** If such service is required; however, this is usually a daily occurrence. Express mail must be received by the U.S. Post Office by **6:30 p.m.** to guarantee next-day delivery. The Express Mail should have a client matter number and the name or initials of the sender for billing purposes. This information is recorded daily in a binder located by the mail machine in the copy center. Cab fare for express mail delivery to the Post Office is provided by the MH&M copy center manager. Ask for a cab fare receipt and, upon return, submit the receipt and change to the MH&M copy center manager or ARO manager on duty. The Post Office is located at the corner of Canal and Harrison (433 West Harrison). Take the escalators up to the second level – you may have to stand in line. Proceed to the teller, give them the envelope(s), they will process them and



# UNITED STATES PATENT AND TRADEMARK OFFICE

13879US01  
TJM  
DSP

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,537	08/29/2001	Dayna Buskirk	RTI-143	7267

7590 12/15/2004

DONALD J. POCHOPIEN  
MCANDREWS, HELD, & MALLOY, LTD  
CITICORP CENTER, 34TH FLOOR  
500 WEST MADISON STREET  
CHICAGO, IL 60661

RECEIVED

JAN 18 2005

McANDREWS, HELD & MALLOY

EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RESPONSE DUE:  
Jan 15, 2005  
Final!



09942537

**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

**NOTICE OF DRAWING INCONSISTENCY WITH SPECIFICATION**

The drawings filed 8/29/01 have been received. However, an inconsistency exists between the drawings and the Brief Description of the Drawings in the specification.

Figures 1A are listed in the Brief Description of the Drawings in the specification but not contained in the Drawings.

Figures 1E are contained in the Drawings but not listed in the Brief Description of the Drawings in the specification.

Applicant is required to correct the above-noted inconsistency within a time period of **ONE MONTH or THIRTY (30) DAYS, whichever is longer**, from the mailing date of this Notice, or within the time remaining in the time period set forth in the Notice of Allowability (Form PTOL-37) to file corrected drawings, whichever is longer. **NO EXTENSION OF THIS TIME PERIOD MAY BE GRANTED UNDER EITHER 37 CFR 1.136 (a) OR (b)**

Failure to correct the above noted inconsistency will result in abandonment of the application.

The file will be held in the Publishing Division to await the correction of the inconsistency.

**Return Corrected Drawings/Specification to:**

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450

Alexandria, VA 22313-1450

Office of Patent Publication/Publishing Division  
Customer Service: 703-308-6789  
1-888-786-0101

## DOCKETING Checklist

### DAILY

- ☐ **Express Mail Receipts** – match receipts with file, notify High Density of files sent back to Secretary
- ☐ **Daily Docket (Patent & TM)** – Patent: distribute to KKM, NC, SM, CB, CLB. TM: distribute to MC  
Docket is run for following periods  
Monday – from previous Sat thru Tuesday  
Tuesday – Tuesday thru Wednesday  
Wednesday – Wednesday thru Thursday  
Thursday – Thursday thru Friday  
Friday – Friday thru next Monday
- ☐ **Daily JMM Docket - Email** to X-team  
Monday – from previous Saturday thru Tuesday  
Tuesday – Monday thru Wednesday  
Wednesday – Tuesday thru Thursday  
Thursday – Wednesday thru Friday  
Friday – Thursday thru next Monday
- ☐ **Incoming Mail** – open, date stamp and docket all incoming mail & faxes. Email incoming mail list to Fileroom
- ☐ **Missing Mail List** – update missing mail list with previous days mail and email to Fileroom
- ☐ **Outgoing Mail** – check and docket all USPTO mail
- ☐ **Daily Final Actions Due Report (Patent & TM)**– email to prosecution  
Monday – run from previous Saturday to Monday  
Tuesday to Friday – run for current day

### WEEKLY

- ☐ **Weekly Docket** - every Friday run docket report for Saturday thru to following Sunday.  
Print and Distribute via ARO to each attorney/secretary.  
Distribute via EMAIL to: Don Pochopien  
Janet McNicholas (and team)

### MONTHLY

- ☐ **Monthly Docket** - run on (or as near as) 28<sup>th</sup> of each month. Run for period 1<sup>st</sup> day of next month to the 31<sup>st</sup> day of the 2<sup>nd</sup> month (so covers two month period).  
Print and distribute via ARO to each attorney & secretary.  
Distribute via EMAIL to: Jan Wiley (Ed Remus/J Barich)  
Betsy Henschen (George Wheeler)  
Robert Fieseler

## **DOCKETING PROCEDURES - INCOMING USPTO MAIL**

### **POSTCARD**

- Enter application number

### **FILING RECEIPT**

- Change IPM Subs-status to Pending
- Check and compare IPM info relating to Serial number; Filing date; Title; Inventors; Projected publication date; and Priority data

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Status	FILED	First Filing Date	8/16/2004	National Filing Date
Sub Status	PENDING	Sub Status Date		Parent Tax Base Date
Parent Country	United States	Parent Filing Date	8/16/2004	Parent Expiration Date
Parent Number	60/602057	Parent Grant Date		
Application Number	10/926621	Application Date	8/26/2004	Tax Base Date
Patent Number		Grant Date		Next Tax Due Date
Publication Number		Publication Date		Expiration Date

- Verify foreign filing dates docketed (if appropriate)
- Mark file with application number and filing date
- Verify Status Inquiry at 18 months from filing date for regular cases, 12 months for continuations

### **CORRECTED FILING RECEIPT**

- Treat as original filing receipt; verify same info. Typically only need to amend projected publication date in actions tab

### **NOTICE OF OMITTED ITEM(S)**

- Enter & Complete Response Due [RES] two months from USPTO mail date
- Copy final due date into deadline field
- Specify in notes "RESP TO NOT. OF OMITTED ITEM(S)"

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Action	Action Due Date	Deadline Date	Completed Date	Action Notes
RESPONSE DUE	12/25/2005	12/25/2005		RESP TO NOT. OF OMITTED ITEM(S)

- Stamp paper "Response Due" and mark due date
- Mark file with action and due date



### **MISSING PART(S)**

- Enter & complete Notice of Missing Parts – mail date (NMM) with PTO mail date and save.
- Copy final due date into deadline field for each due date

Inventors		Other Nos	Ext Files		Related Id
Title		Text			
Action	Action Due Date	Deadline Date	Completed Date	Action Notes	
Notice of Missing Parts - Mail Date			10/25/2004		
Notice of Missing Parts Due	12/25/2004	5/25/2005			
Notice of Missing Parts - 1mo Extension	1/25/2005	5/25/2005			
Notice of Missing Parts - 2mo Extension	2/25/2005	5/25/2005			
Notice of Missing Parts - 3mo Extension	3/25/2005	5/25/2005			
Notice of Missing Parts - 4mo Extension	4/25/2005	5/25/2005			
Notice of missing parts - 2wk Final Reminder	5/11/2005	5/25/2005			
Notice of missing parts - 1wk Final Reminder	5/18/2005	5/25/2005			
Notice of Missing Parts - Final Deadline	5/25/2005	5/25/2005			

- Delete mail date action
- Stamp paper "Response Due" and mark due date
- Mark file with action and due date

### **NOTICE TO FILE CORRECTED APPLICATION PAPERS**

- Enter & complete File Corrected Appln Papers – mail date (FCM) with PTO mail date and save.
- Copy final due date into deadline field for each due date

Inventors		Other Nos	Ext Files	Related Id	
Title		Text			
Action	Action Due Date	Deadline Date	Completed Date	Action Notes	
File Corrected Appln Papers - Mail Date			10/25/2004		
File Corrected Appln Papers Due	12/25/2004	5/25/2005			
File Corrected Appln Papers - 1mo Extension	1/25/2005	5/25/2005			
File Corrected Appln Papers - 2mo Extension	2/25/2005	5/25/2005			
File Corrected Appln Papers - 3mo Extension	3/25/2005	5/25/2005			
File Corrected Appln Papers - 4mo Extension	4/25/2005	5/25/2005			
File Corrected Appln Papers - 2wk Final Reminder	5/11/2005	5/25/2005			
File Corrected Appln Papers - 1wk Final Reminder	5/18/2005	5/25/2005			
File Corrected Appln Papers - Final Deadline	5/25/2005	5/25/2005			

- Delete mail date action
- Stamp paper "Response Due" and mark due date
- Mark file with action and due date

### **REVISED PUBLICATION DATE**

- Change publication due date in Actions tab

### **NOTICE OF PUBLICATION OF APPLICATION**

- Change sub-status to Published [P]
- Add publication number and publication date in filing data tab

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Status	FILED	First Filing Date	10/1/2003	National Filing Date
Sub Status	PUBLISHED	Sub Status Date		Parent Tax Base Date
Parent Country		Parent Filing Date		Parent Expiration Date
Parent Number		Parent Grant Date		
Application Number	09/000000	Application Date	10/1/2004	Tax Base Date
Parent Number		Grant Date		Next Tax Due Date
Publication Number	2004000000	Publication Date	10/25/2004	Expiration Date

- Complete Action Published [PUB] with publish date
- Verify that at least one action is open, if not add Status Inquiry
- Mark file with Published - no due date

### **ASSIGNMENT RECORDATION**

- Change "Assignment Made" to "Assignment Recorded" in filing data tab
- Check inventor's assignment date against IPM entry
- Verify that at least one action is open, if not add Status Inquiry
- Mark file with Assignment Recordation date, reel/frame numbe

### **ASSIGNMENT NON-RECORDATION**

- Docket Correction Requested [CRR] with due date – add "crct assgn" to notes field

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Action	Action Due Date	Deadline Date	Completed Date	Action Notes
CORRECTION REQUESTED	11/25/2004	11/25/2004		CRCT ASSIGNMENT

### **OFFICE ACTION / RESTRICTION REJECTION**

- Enter & complete "Restriction Mail Date" [RTM] with PTO mail date
- Copy final due date into deadline field for each due date
- Delete Status Inquiry

Inventors		Other Nos		Ext Files		Related Id	
Title		Text					
Action	Action Due Date	Deadline Date	Completed Date	Action Notes			
Restriction mail date			10/25/2004				
Restriction	11/25/2004	4/25/2005					
Restriction - 1st extension	12/25/2004	4/25/2005					
Restriction - 2nd extension	1/25/2005	4/25/2005					
Restriction - 3rd extension	2/25/2005	4/25/2005					
Restriction - 4th extension	3/25/2005	4/25/2005					
Restriction - 2wk Final Reminder	4/11/2005	4/25/2005					
Restriction - 1wk Final Reminder	4/18/2005	4/25/2005					
Restriction - final deadline	4/25/2005	4/25/2005					
*							

- Delete mail date action
- Stamp paper "Response Due" and mark due date
- Mark file with "Rest/Election" with PTO mail date and due date

### **NON-FINAL OFFICE ACTION**

- Enter & complete "Application Rejection" – Mail Date [REJ] with PTO mail date and save
- Copy final due date into deadline field for each due date
- Delete Status Inquiry

Inventors		Other Nos		Ext. Files		Related Id	
Title		Text					
	Action	Action Due Date	Deadline Date	Completed Date	Action Notes		
	Application Rejected - Mail Date			10/25/2004			
	Rejection Response Due	1/25/2005	4/25/2005				
	Rejection Response - 1mo	2/25/2005	4/25/2005				
	Rejection Response - 2mo	3/25/2005	4/25/2005				
	Rejection Response - 2wk Final	4/11/2005	4/25/2005				
	Rejection Response - 1wk Final	4/18/2005	4/25/2005				
	Rejection Response - Final	4/25/2005	4/25/2005				
*							

- Delete mail date action
- Stamp paper "Response Due" with PTO mail date and due date
- Mark file with "O/A" and due date
- Delete mail date action

### **FINAL OFFICE ACTION**

- Enter & complete " Final Rejection – Mail date" [FRJ] with PTO mail date
- Copy final due date into deadline field for each due date
- Delete Status Inquiry

Inventors		Other Nos.		Ext. Files		Related Id	
Title		Text					
	Action	Action Due Date	Deadline Date	Completed Date	Action Notes		
	Final Rejection - Mail Date			10/25/2004			
	Response to Provoke Advisory	12/25/2004	4/25/2005				
	Final Rejection Due	1/25/2005	4/25/2005				
	Appeal Due	1/25/2005	4/25/2005				
	Final Rejection - 1mo Extension	2/25/2005	4/25/2005				
	Appeal Due - 1mo Extension	2/25/2005	4/25/2005				
	Final Rejection - 2mo Extension	3/25/2005	4/25/2005				
	Appeal Due - 2mo Extension	3/25/2005	4/25/2005				
	Final Rejection - 2wk Final	4/11/2005	4/25/2005				
	Appeal Due - 2wk Final Reminder	4/11/2005	4/25/2005				
	Final Rejection - 1wk Final	4/18/2005	4/25/2005				
	Appeal Due - 1wk Final Reminder	4/18/2005	4/25/2005				
	Final Rejection - Final Deadline	4/25/2005	4/25/2005				
	Appeal Due - Final Deadline	4/25/2005	4/25/2005				

- Delete mail date action
- Stamp paper "Amendment" on mail with [Response to Provoke Advisory Action] date; Stamp Notice of Appeal on Mail with [Appeal Due] Date;
- Mark file with "Amendment" & "Notice of Appeal" with PTO mail date and due dates

### ADVISORY ACTION

- Enter & complete "Advisory Action Received" [ADA] with PTO mail date
- Overwrite any Action notes with "Resp. to Adv Action Due" and specify in the one week and 2 week reminders and final deadline notes "File RCE, Con., or Notice of Appeal

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Action	Action Due	Deadline	Completed	Action Notes
Response to Provoke Advisory	9/29/2004	1/29/2005	9/29/2004	
Final Rejection Due	10/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Appeal Due	10/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Final Rejection - 1mo Extension	11/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Appeal Due - 1mo Extension	11/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Final Rejection - 2mo Extension	12/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Appeal Due - 2mo Extension	12/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Final Rejection - 2wk Final	1/15/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL!! RESP TO ADV
Appeal Due - 2wk Final	1/15/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL!! RESP TO ADV
Final Rejection - 1wk Final	1/22/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL!! RESP TO ADV
Appeal Due - 1wk Final	1/22/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL!! RESP TO ADV
Final Rejection - Final Deadline	1/29/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL!! RESP TO ADV
Appeal Due - Final Deadline	1/29/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL!! RESP TO ADV

- Stamp "Response Due" with Final Rejection Due Date;
- Mark file with "Advisory Action" with Final Rejection. Due date (if Advisory Action received after Final date past then stamp with next available extension, noting extension was included)

### **EX-PARTE QUAYLE OFFICE ACTION**

- Enter & complete "Ex-Parte Quayle Mail date" [XPM] with PTO mail date
- Copy final due date into deadline field for each due date

Inventors	Other Nos	Ext Files	Related Id
Title	Text		
Action	Action Due	Deadline	Completed Date
Ex-parte quayle mail date			12/5/2004
Ex-parte quayle	2/5/2005	6/5/2005	
Ex-parte quayle - 1st extensio	3/5/2005	6/5/2005	
Ex-parte quayle - 2nd extensio	4/5/2005	6/5/2005	
Ex-parte quayle - 3rd extensio	5/5/2005	6/5/2005	
Ex-parte quayle - 2wk Final Reminder	5/22/2005	6/5/2005	
Ex-parte quayle - 1wk Final Reminder	5/29/2005	6/5/2005	
Ex-parte quayle - final deadli	6/5/2005	6/5/2005	

- Delete mail date action
- Stamp "Response Due" on mail with due date
- Mark file with "Ex-Parte Quayle" with PTO mail date and due date

### **NOTICE OF NON-COMPLIANT AMENDMENT**

- Determine whether our response was a Preliminary Amendment or a Response to Final O/A amendment
- Manually docket One Month OR One month with 5 extensions, dependent on type of amendment filed.
- Delete Status Enquiry

### **NOTICE OF ALLOWANCE**

- Change sub-status to Allowed "A"
- Enter & complete "Notice of Allowance" [NOA] with PTO mail date
- If Drawings required enter "Drawings Due" [DRG] with same due date as Issue Fee Due
- Copy Issue Fee due date into deadline field for each due date

Inventors	Other Nos	Ext Files	Related Id
Title	Text		
Action	Action Due	Deadline	Completed Date
Notice of allowance			12/5/2004
PTA Review	1/4/2005		
Reminder issue fee due - 1mo Reminder	2/5/2005	3/5/2005	
312 Amendment - 1mo Reminder	2/5/2005	3/5/2005	
Reminder issue fee due - 2wk Final	2/19/2005	3/5/2005	
Reminder issue fee due - 1wk Final	2/26/2005	3/5/2005	
ISSUE FEE DUE	3/5/2005	3/5/2005	
AMENDMENT AFTER ALLOWANCE	3/5/2005	3/5/2005	
DRAWINGS REQUIRED OR DUE	3/5/2005	3/5/2005	

- Stamp "Response Due" on mail with Issue fee due date, and Drawings if necessary
- Mark file with "Issue Fee" "Drawings" with PTO mail date and due dates

- If Broadcom case also docket file "Continuation Patent Application" [CPA], with due date being date Issue Fee is due
- Delete Mail date

### **ISSUE NOTIFICATION**

- Insert Issue Date and patent number in filing data tab
- Complete "Check on Issue Date" [COI] with issue date as per PTO notice
- Enter "Patent Issues/No Act" [PAT] with issue date

Inventors		Other Nos.		Ext. Files		Related Id	
Title	Text						
Action	Action Due	Deadline	Completed Date	Action Notes			
CHECK ON ISSUE DATE	12/20/2004		12/20/2004				
PAT. ISSUES /NO ACT REQ'D	12/20/2004						
Maintenance Fee - 3.5 year	6/20/2008						
Maintenance Fee - 7.5 year	6/20/2012						
Maintenance Fee - 11.5 year	6/20/2016						
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>							

- Check IP Master Fee Schedule to ensure all tax dates generated

Fee Schedule and History				
TaxYear	Next Tax Date	Projected Due	Drop Date	Amount Paid
4	6/20/2008		12/20/2008	
8	6/20/2012		12/20/2012	
12	6/20/2016		12/20/2016	
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				

- Stamp "Response Due" with date for all Maintenance Fees
- Mark file with Issue Date, Patent number and Maintenance fees due

### **ISSUED PATENT**

- Change sub-status to "Issued" [G]
- Complete "Pat. Issues/No Act Req'd" [PAT] with issue date
- Check and compare patent number & issue date with IP Master data

Inventors		Other Nos.		Ext. Files		Related Id	
Status	GRANTED	First Filing Date	10/1/2003	National Filing Date			
Sub Status	ISSUED	Sub Status Date		Parent Tax Base Date			
Parent Country		Parent Filing Date		Parent Expiration Date			
Parent Number		Parent Grant Date					
Application Number	09/000000	Application Date	10/1/2004	Tax Base Date	6/20/2005		
Patent Number	66666666	Grant Date	12/20/2004	Next Tax Due Date	6/20/2008		
Publication Number	20040000000	Publication Date	10/25/2004	Expiration Date	10/1/2024		

- Check and compare patent number & issue date marked on file cover

## SOFT COPIES

- Enter & complete "Soft Copies" [SOF] with today's date
- Check patent number & issue date against IPM data and file cover

## MAINTENANCE FEE STATEMENT

- Within FEE SCHEDULE TAB:  
Paid date should have been entered on day of payment, if not complete date  
Check "RECEIPT" box

Fee Schedule and History									
Tax Year	Next Tax Date	Drop Date	Amount Paid	Paid Date	Authorized Date	Invoice	Letter Date	Receipt	
4	6/20/2008	12/20/2008		5/20/2008				<input checked="" type="checkbox"/>	
8	6/20/2012	12/20/2012						<input type="checkbox"/>	
12	6/20/2016	12/20/2016						<input type="checkbox"/>	

If asked to update next annuity, select "yes"

**Confirm Payment**

Do you want to mark this tax year as PAID?

NOTE: Choosing 'Yes' will mark this record as PAID.  
NO PAYMENTS will be selected as due for payment ON or BEFORE this tax year.

## NOTICE OF ABANDONMENT

- Change Status to "Inactive" [I] –
- **Note:** If sub-status did not previously show Abandoned & there is no indication of intentional abandonment do not change Status to "Inactive" until Attorney review.

Inventors	Other Nos	Ext. Files	Related Id
Title	Text		
Status	INACTIVE	First Filing Date	10/1/2003
Sub Status	ABANDONED	Sub Status Date	
Parent Country		Parent Filing Date	
Parent Number		Parent Grant Date	
Application Number	09/000000	Application Date	10/1/2004
Patent Number		Grant Date	
Publication Number	20040000000	Publication Date	10/25/2004
		National Filing Date	
		Parent Tax Base Date	
		Parent Expiration Date	
		Tax Base Date	
		Next Tax Due Date	
		Expiration Date	

- Enter & Complete "Abandoned" [ABN] with PTO mail date



Inventors		Other Nos		Ext Files		Related Id	
Title		Text					
Action	Action Due	Deadline	Completed Date	Action Notes			
ABANDONED			12/5/2004				
*							

- Enter reason for abandonment in description tab
- Stamp "ABANDONED" on file

### NOTICE OF EXPIRATION

- Change Status to "Inactive" [I] and sub-status to "Expired" [X]

Other Nos		Ext Files		Related Id		Title		Text	
Filing Data		Related Party Info		Actions		Description		Inventors	
Status	INACTIVE			First Filing Date	10/1/2003	National Filing Date			
Sub Status	EXPIRED			Sub Status Date		Parent Tax Base Date			
Parent Country				Parent Filing Date		Parent Expiration Date			
Parent Number				Parent Grant Date					
Application Number	09/000000			Application Date	10/1/2004	Tax Base Date	6/20/2005		
Patent Number	6666666			Grant Date	12/20/2004	Next Tax Due Date	6/20/2012		
Publication Number	20040000000			Publication Date	10/25/2004	Expiration Date	10/1/2024		

- Enter & complete "Expired" [EXP] with PTO mail date
- Enter reason for expiration in Description Tab.

Other Nos		Ext Files		Related Id		Title		Text	
Filing Data		Related Party Info		Actions		Description		Inventors	
Action	Action Due	Deadline	Completed Date	Action Notes					
ABANDONED			12/5/2004						
EXPIRATION			10/1/2024	patent term expired					
Maintenance Fee - 3.5 year	6/20/2008		5/20/2008						
Maintenance Fee - 7.5 year	6/20/2012		6/20/2012						
Maintenance Fee - 11.5 year	6/20/2016		6/20/2016						
*									



## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Wednesday, January 19, 2005 2:38 PM  
**To:** 'mbaker@rtix.com'  
**Cc:** 'bsanders@rtix.com'  
**Subject:** FW: 13879US01



SCN\_20050119135  
824\_001.pdf

i Maurie:

A problem arose in this application in which the claims were allowed and in which the issue fee was paid on 12/14/04. On 12/15/04, after the payment of the issue fee, the PTO objected for the first time to the original figures filed in 2001. I suspected that the Figures might be an issue because the latter were hand drawn. In the meantime, I ordered formal drawings from a draftsman for the newly filed 13879US02 application. We have these in house.

On 01/18/05 (yesterday), our docketing department first received the written objection dated 12/15/04 (See the attachment). I do not know how or why it took so long to arrive. However, it only had a 30 day period in which to respond that was not extendable. Hence, the application has gone abandoned. If the communication would have been dated 12/16, we would have lucked out with the weekend and MLK holiday, and could have filed it yesterday.

Course of Action:

We could draft a petition and/or Request to reinstate an unintentionally abandoned application with submission of new figures and an amendment under 1.312 correcting the numbering in the Brief Description of the Figures.

Alternatively, we have a pending continuation application. We could file another continuation application with a preliminary amendment and the new Figures. I believe that the refiling would be more cost effective. In the preliminary amendment, we could advise the Examiner as to what had occurred. I expect that we would get a Notice of Allowance if we get the same Examiner.

How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh  
Sent: Wednesday, January 19, 2005 1:59 PM  
To: Don Pochopien  
Subject: SCN\_20050119135824\_001.pdf

## Don Pochopien

---

**From:** mbaker@rtix.com  
**Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01



ENVELOPE.TXT

Don,

I will need to get some internal guidance on this one to get you a definitive answer. I have two questions/comments for you in the meantime...

(1) Do you think that the first option you mention below (petition to revive an unintentionally abandoned application) would get us the patent sooner? Based on my experience, I would definitely say yes, as a new filing, even a continuation, can linger without examination for at least a year. Petitions can be slow, but not that slow usually. Also we take the chance of getting a different examiner and/or the examiner changing their mind.

(2) I am a little confused on the cost issue. It appears to me that the petition route would cost much less in PTO fees (a little more than half as much), although maybe it is a lot more work for you guys and that makes the difference. Sorry but I don't know that much about your cost structure.

If you could provide me your input, that would be really helpful.

Thanks,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Wednesday, January 19, 2005 3:39 PM  
**To:** Maurie Baker  
**Cc:** Ben Sanders  
**Subject:** FW: 13879US01

Hi Maurie:

A problem arose in this application in which the claims were allowed and in which the issue fee was paid on 12/14/04. On 12/15/04, after the payment of the issue fee, the PTO objected for the first time to the original figures filed in 2001. I suspected that the Figures might be an issue because the latter were hand drawn. In the meantime, I ordered formal drawings from a draftsman for the newly filed 13879US02 application. We have these in house.

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Course of Action:

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How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM

To: Don Pochopien

Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien

dpo chopien@MHMLAW.COM

\*\*\*\*\*

CONFIDENTIALITY NOTICE:

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\*\*\*\*\*

## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Wednesday, January 19, 2005 4:01 PM  
**To:** 'mbaker@rtix.com'  
**Subject:** RE: 13879US01

Hi Maurie:

The additional costs would relate to the cost of drafting the petition, and documenting our internal docketing as part of the petition. If we file it with an IDS up front, it seems to go faster.

There is a diligence requirement or reviving. Hence, we also need to establish that MHM and RTI acted diligently in seeking revival once we learned of the abandonment.

Donald

-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com]  
**Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01

Don,

I will need to get some internal guidance on this one to get you a definitive answer. I have two questions/comments for you in the meantime...

(1) Do you think that the first option you mention below (petition to revive an unintentionally abandoned application) would get us the patent sooner? Based on my experience, I would definitely say yes, as a new filing, even a continuation, can linger without examination for at least a year. Petitions can be slow, but not that slow usually. Also we take the chance of getting a different examiner and/or the examiner changing their mind.

(2) I am a little confused on the cost issue. It appears to me that the petition route would cost much less in PTO fees (a little more than half as much), although maybe it is a lot more work for you guys and that makes the difference. Sorry but I don't know that much about your cost structure.

If you could provide me your input, that would be really helpful.

Thanks,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Wednesday, January 19, 2005 3:39 PM  
**To:** Maurie Baker  
**Cc:** Ben Sanders  
**Subject:** FW: 13879US01

Hi Maurie:

A problem arose in this application in which the claims were allowed and in which the issue fee was paid on 12/14/04. On 12/15/04, after the payment of the issue fee, the PTO objected for the first time to the original figures filed in 2001. I suspected that the Figures might be an issue because the latter were hand drawn. In the meantime, I ordered formal drawings from a draftsman for the newly filed 13879US02 application. We have these in house.

On 01/18/05 (yesterday), our docketing department first received the written objection dated 12/15/04 (See the attachment). I do not know how or why it took so long to arrive. However, it only had a 30 day period in which to respond that was not extendable. Hence, the application has gone abandoned. If the communication would have been dated 12/16, we would have lucked out with the weekend and MLK holiday, and could have filed it yesterday.

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How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM  
To: Don Pochopien  
Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
dpochopien@MHMLAW.COM

\*\*\*\*\*

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## Don Pochopien

---

**From:** mbaker@rtix.com  
**Sent:** Thursday, January 20, 2005 8:49 AM  
**To:** Don Pochopien  
**Subject:** RE: 13879US01



ENVELOPE.TXT

Yes, that all makes sense. Thanks a lot for the further info.

So, based on the requirements you mentioned, do you also think that it would take just as long to go this route (as opposed to a new filing)?

I know that one of the factors in the decision will be how quickly can we get the patent granted.

I am just trying to get all of our options fully laid out to present to upper management.

Lastly, is there a time frame for this decision? Please let me know.

Thanks again,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262

Email: mbaker@rtix.com

Website: www.rtix.com

-----Original Message-----

From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]

Sent: Wednesday, January 19, 2005 5:01 PM

To: Maurie Baker

Subject: RE: 13879US01

Hi Maurie:

The additional costs would relate to the cost of drafting the petition, and documenting our internal docketing as part of the petition. If we file it with an IDS up front, it seems to go faster.

There is a diligence requirement or reviving. Hence, we also need to establish that MHM and RTI acted diligently in seeking revival once we learned of the abandonment.

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-----Original Message-----

From: mbaker@rtix.com [mailto:mbaker@rtix.com] Sent: Wednesday, January 19, 2005 3:53 PM

To: Don Pochopien

Cc: bsanders@rtix.com

Subject: RE: 13879US01

Don,

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don't know that much about your cost structure.  
If you could provide me your input, that would be really helpful.  
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How should we proceed?

Donald

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From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM  
To: Don Pochopien  
Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
dpochopien@MHMLAW.COM

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Donald Pochopien

dpo chopien@MHMLAW.COM

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\*\*\*\*\*



## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Thursday, January 20, 2005 9:21 AM  
**To:** 'mbaker@rtix.com'  
**Subject:** RE: 13879US01

Hi Maurie:

Petitions in the PTO take 3 to 6 months before being granted. There is a 98% likelihood that it would be granted. The new continuation application would take 3-6 months to get a response from the PTO. There is about a 80% likelihood that there would be a first action allowance. The difference is that it would cost about \$2,000-3,000 to prepare the petitions. I could file the new application today. It would take me until next week to prepare the petitions and file them.

Donald

-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com]  
**Sent:** Thursday, January 20, 2005 8:49 AM  
**To:** Don Pochopien  
**Subject:** RE: 13879US01

Yes, that all makes sense. Thanks a lot for the further info.

So, based on the requirements you mentioned, do you also think that it would take just as long to go this route (as opposed to a new filing)?

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I am just trying to get all of our options fully laid out to present to upper management.

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Thanks again,

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Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
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**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Wednesday, January 19, 2005 5:01 PM  
**To:** Maurie Baker  
**Subject:** RE: 13879US01

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Donald

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**From:** mbaker@rtix.com [mailto:mbaker@rtix.com] **Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01

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(2) I am a little confused on the cost issue. It appears to me that the petition route would cost much less in PTO fees (a little more than half as much), although maybe it is a lot more work for you guys and that makes the difference. Sorry but I don't know that much about your cost structure.

If you could provide me your input, that would be really helpful.

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Post Office Box 2650

Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262

Email: mbaker@rtix.com

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From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]

Sent: Wednesday, January 19, 2005 3:39 PM

To: Maurie Baker

Cc: Ben Sanders

Subject: FW: 13879US01

Hi Maurie:

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How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM

To: Don Pochopien

Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
dpochopien@MHMLAW.COM

\*\*\*\*\*

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## Don Pochopien

---

**From:** mbaker@rtix.com  
**Sent:** Monday, January 24, 2005 10:58 AM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** Instructions: 13879US01



ENVELOPE.TXT

Don,  
This is the unintentionally abandoned case.  
After meeting with the management here and discussing the different options for this case, we have decided to go the petition route. I realize it will take you some time to get the petition together. Please give me an idea of when to expect it, if you can.  
Also, we would like to have a chance to look at the petition before you file it please.  
Thank you very much,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Thursday, January 20, 2005 10:22 AM  
**To:** Maurie Baker  
**Subject:** RE: 13879US01

Hi Maurie:

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**From:** mbaker@rtix.com [mailto:mbaker@rtix.com] **Sent:** Thursday, January 20, 2005 8:49 AM  
**To:** Don Pochopien  
**Subject:** RE: 13879US01

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Phone: 386-418-8888 x 4262  
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## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Thursday, January 27, 2005 10:06 AM  
**To:** 'bsanders@rtix.com'  
**Cc:** 'mbaker@rtix.com'  
**Subject:** 13879US01 Petition to Revive; URGENT



13879US01Amdt 13879US01Submissi 13879US01Pet to 13879US01Stateme 13879US01Pochopi  
after Payment of... on of Corr Dr... Revive Unavoid... nt of Facts Re... en Declaration...

Hi Ben and Maurie:

Attached is a copy of our Petition to Revive the above identified application which was unavoidably abandoned. Also attached are copies of our responses (Amendment and Submission of Corrected Drawings) to the outstanding official communication, a Statement of Facts, and the Pochopien Declaration corroborating many of the facts as stated therein.

Please review them ASAP and advise me of any proposed changes. We have a diligence requirement and must act promptly to revive after learning of the abandonment.

Donald





ATTORNEY DOCKET NO. RTI 143 /1915-13879US01

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

In the Application of:

Buskirk, et al.

Serial No.: 09/942,537

Filed: August 29, 2001

For: "Soft and Calcified Tissue  
Implants"

Group Art Unit: 3738

Examiner: Alvin J. Stewart

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. BOX 1450, Arlington, VA 22313-1450, on this date:

January 27, 2005

Donald J. Pochopien  
Registration No. 32,167  
Attorney for Applicants

POCHOPIEN DECLARATION  
PROVIDING FACTS SUPPORTING THE STATEMENT UNDER 37 C.F.R. § 1.137(a)  
THAT THE ENTIRE DELAY IN FILING THE REPLY  
UP TO THE FILING OF A GRANTABLE PETITION WAS  
UNAVOIDABLE

Mail Stop Petition  
Commissioner for Patents  
P.O. BOX 1450  
Arlington, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.137(a), Applicants' undersigned attorney, Donald J. Pochopien, hereby provide the Commissioner for Patents with his statement of facts to corroborate Applicants' claim that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable," and in doing so declares as follows:

1. I, Donald J. Pochopien, am a partner at the law offices of McAndrews held & Malloy Ltd. and am registered (Reg. No. 32,167) to practice before the USPTO. I am also the undersigned attorney of record and the attorney and person at McAndrews Held & Malloy that is most familiar with the facts surrounding the prosecution of this application.

2. At the offices of McAndrews Held & Malloy Ltd. (MHM) it is the business practice in the mail room that “[o]ne individual will date stamp (on the back of the envelope) all incoming mail with the exception of magazines and post cards.” Another individual sorts the date stamped mail for delivery. Thereafter, “[t]he prosecution mail (anything from the USPTO) will be delivered [to prosecution docketing] immediately after delivering Accounting’s mail.” Finally, it is the business practice at McAndrews Held & Malloy that mail delivery begin “no later than 10:00 am”:

After date stamping and sorting the U.S. mail, ARO’s internal; messenger service will deliver all mail. Delivery of the mail will begin first to the Accounting Department, then to the Prosecution [docketing] Dept. and then to the employees of MHM no later than 10:00 am. ARO should send an e-mail to “Entire Firm” if the mail delivery is delayed.

[Exhibit A: Relevant pages from Procedure Manual at MHM on “U.S. Mail Services, Incoming;” emphasis in original]

3. For the above-identified application, the undersigned attorney signed the issue fee documents and caused the issue fee to be paid and transmitted by mail to the USPTO on December 14, 2004.

4. On December 15, 2004, unbeknownst to the undersigned attorney, the attached Official Communication was allegedly transmitted by mail to the undersigned attorney at the offices of McAndrews Held & Malloy, Ltd. [See Exhibit B: Official Communication (FORM PTO-1631) dated 12/15/04 at page 1.]

5. On page 2, the Official Communication states that the drawings received on 08/29/01 have an inconsistency between the Figures 1A, 1F and the Brief Description of the Drawings, and that Applicant is required to correct this inconsistency “within a time period of **ONE MONTH or THIRTY (30) DAYS, whichever is longer**, from the mailing date of this Notice” and that “**NO EXTENSION OF THIS TIME PERIOD MAY BE GRANTED UNDER EITHER 37 CFR 1.136 (a) OR (b).**” [See Exhibit B: Official Communication dated 12/15/04 at page 2.]

6. Based upon the mailing date of December 15, 2004 that is on the face of the Official Communication, the final **UNEXTENDABLE** date for Response to the Official Communication was January 15, 2005. [See Exhibit B: Official Communication dated 12/15/04 at pages 1 and 2.]

7. However, based upon the business practices of McAndrews Held & Malloy, as recited in ¶2 herein, it is believed that on January 18, 2005, the Official Communication dated December 15, 2004 was first received in the mail room of McAndrews Held & Malloy Ltd.

8. As evidenced by the date stamp of “RECEIVED JAN 18 2005” on the face of the Official Communication of December 15, 2004, the Official Communication was first received and seen by the docketing department at McAndrews Held & Malloy on January 18, 2005. [Exhibit B: Official Communication at page 1; and Exhibit C: Listings of Docketing procedures.]

9. As part of their processing of the Official Communication, the docketing department at McAndrews Held & Malloy entered the response due date of “Jan 15, 2005” on the face of the Official Communication and indicated that it was “Final.” [See Exhibit B: Official Communication; and Exhibit C: Listing of Docketing procedures.]

10. On the afternoon of January 18 2005, Helen Hughes, the supervisor of the docketing paralegals, personally brought the file for this application to me and explained to me that the docketing department had just received on that date the Official Communication dated 12/15/04, and that the unextendable response date of 01/15/05 had already passed.

11. On the next day (Wednesday, January 19, 2005), I informed the assignee and client, Regeneration Technologies Inc. (RTI) , by e-mail what had occurred, advised them of two different ways to proceed (either refiling the application off of a co-pending application or the more costly petition to revive the unavoidably abandoned application), along with an estimate of the costs, and asked them to advise me on how they would like to proceed. [Exhibit D: E-mail from Donald Pochopien (MHM) to Maurie Baker (RTI) of 01/19/05 at 2:38 PM.]

12. On that same day (Wednesday, January 19, 2005), RTI responded back to me in an e-mail and inquired about time for the PTO to act and asked for an explanation of the costs. [Exhibit E: E-mail from Maurie Baker (RTI) to Donald Pochopien (MHM) of 01/19/05 at 3:53 PM.]

13. Later that same day (Wednesday, January 19, 2005), I replied to RTI by e-mail and informed them where the additional costs arise in filing the petition to revive. Because an answer was not immediately forthcoming, I also informed RTI that there is a diligence requirement and that we must proceed diligently if we wish to file a petition to revive the application. [Exhibit F: E-mail from Donald Pochopien (MHM) to Maurie Baker (RTI) of 01/19/05 at 4:01 PM.]

14. On the morning of the next day (Thursday, January 20, 2005), Maurie Baker of RTI advised me that she would have to present the options to upper management at RTI to obtain a decision. [The need for an upper management decision is based upon the Sarbanes-Oxley law passed by Congress in 2002.] She also inquired about the time frames for each of

the options and my time for acting. [Exhibit G: E-mail from Maurie Baker (RTI) to Donald Pochopien (MHM) of 01/20/05 at 8:49 AM.]

15. That same morning (Thursday, January 20, 2005), I responded by e-mail within the hour and advised RTI, based upon my experience, of my best estimates of the time for response from the PTO for each of the two options, the likelihood of success for each option, and the time that I would need to draft the appropriate filings. [Exhibit H: E-mail from Donald Pochopien (MHM) to Maurie Baker (RTI) of 01/20/05 at 9:21 PM.]

16. On the following Monday morning (January 24, 2005), RTI authorized me to proceed with petitioning to revive this unavoidably abandoned application. [Exhibit I: E-mail from Maurie Baker (RTI) to Donald Pochopien (MHM) of 01/24/05 at 10:58 AM.]

17. On Monday, January 24, 2005, I pushed other work aside and drafted the responses required under the Official Communication. Specifically, I drafted the "Submission of Corrected Drawings" and the "Amendment After Payment of the Issue Fee."

18. On Tuesday, January 25, 2005, I pushed other work aside and drafted the "Petition Under 37 C.F.R. 1.137(a) To Revive An Unavoidably Abandoned Application" and began collecting facts and drafting the Statement of Facts ("**STATEMENT OF FACTS UNDER 37 C.F.R. § 1.137(a) TO CORROBORATE THAT THE ENTIRE DELAY IN FILING THE REPLY UP TO THE FILING OF A GRANTABLE PETITION WAS UNAVOIDABLE**").

19. On Wednesday, January 26, 2005, I continued drafting this document and began drafting the Pochopien Declaration that provides the underlying factual support for many of the statements made herein.

20. On Thursday, January 27, 2005, I completed the Pochopien Declaration and this "Statement of Facts . . ." and sent both documents along with the proposed responses, as

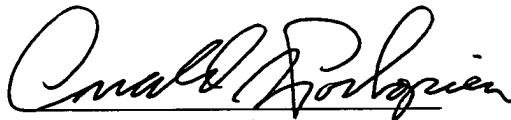
e-mail attachments, to the assignee RTI for their review. [Exhibit J: E-mail from Donald Pochopien to Benjamin Sanders (RTI) on 01/27/05 at 10:06AM.]

21. For all these reasons, the undersigned attorney believes that he and RTI at all times acted diligently, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable.

22. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

By



Donald J. Pochopien

Registration No. 32,167

Attorney of Record

**MCANDREWS, HELD & MALLOY, LTD.**

500 West Madison, 34th Floor

Chicago, Illinois 60661

(312) 775-8133

Dated: January 27, 2005

J:\open\Djp\Regeneration Technologies\USPTO\13897US01\Statement of Facts Re Petition.doc

should never approach MHM employees and ask them if they can go to trial with them.

### Expectations

Anticipate long hours under pressure. Expectations include knowledge of copy quality and timeliness. Faxes will need to be distributed as quickly as possible. Supplies must be monitored, re-ordered, re-stocked and readily available. Messenger services may be requested. You must keep a meter reading of all copies made for billing purposes. Oftentimes, you will be asked to re-stock refrigerators, snacks, medicinal supplies, etc. (depending on the particular circumstances). You may get requests from attorneys, paralegals, secretaries, or others and those requests will vary greatly. Be prepared for the unusual and unexpected. Paralegals often attend trial during the day and will ask for copy jobs to be completed in their absence. If the situation becomes overwhelming, call The MHM Manager and ask for some advice or additional assistance.

### Expenses

A cash advance will be given to you by the firm for miscellaneous expenses. The amount will be determined according to length of stay and anticipated needs and will be determined and approved by a MHM Manager or other MHM employee. Reasonable expenses include an occasional book or magazine or local entertainment such as a movie but this should not be abused. Other expenses will include food, and personal hygiene products such as toothpaste. You may have to provide tips to service persons but oftentimes tips are built-in to the hotel cost so you must seek guidance and direction from an attorney, paralegal or secretary. Occasionally you will be requested to purchase food or sundry items. You will be held accountable for the cash advance you are given so it is imperative that you keep all receipts and track all cash transactions. Upon your return to the office, you will be required to complete an expense report. If you should require more cash prior to or before your return, please contact the MHM Manager for instruction. If you should spend any personal money for reasonable expenses, you will be reimbursed.

## L. U.S. MAIL SERVICES

### Incoming

U.S. Mail is delivered Monday through Friday by "On the Fly" between **7:45 a.m. and 8:45 a.m.** The mail will be brought in one or more locked bag(s). The "On the Fly" messenger will be given unlocked replacement bag(s). The key to unlock the bags can be obtained from any ARO Manager. Mail should never be opened. The two individuals who process the incoming US Mail will sign a log sheet after date stamping and sorting. The mail will be unlocked in the presence of two or more ARO personnel. One individual will date stamp (on the back of the envelope) all incoming mail with the exception of magazines and postcards. The other individual will sort the mail by three areas - 35<sup>th</sup> floor, 34<sup>th</sup> floor east, and 34<sup>th</sup> floor west. Any instruction for special handling whether permanent or

temporary should be noted on the mail cart(s). Unidentified mail, foreign mail and checks are delivered to Accounting in a locked bag. If no one is present in Accounting, the bag may be given to MHM Management (Hugh Washburn, Jim Boettger, Ann-Marie Jensen or Jan Wiesner). Accounting's locked bag of mail will be the first mail delivered. The prosecution mail (anything from the USPTO) will be delivered immediately after delivering Accounting's mail. Returned mail should be given to Ann-Marie Jensen unless the sender's initials or name is indicated in the return address portion in which case the mail would be given directly to the sender. After date stamping and sorting the U.S. Mail, ARO's internal messenger service will deliver all mail. Delivery of mail will begin first to the Accounting Department, then to the Prosecution Dept, and then to the employees of MHM no later than 10:00 a.m. ARO should send an e-mail to "Entire Firm" if the mail delivery is delayed.

#### Outgoing

Outgoing U.S. Mail can be either dropped off in the ARO Center on the 34<sup>th</sup> Floor or will be retrieved from the designated bins located throughout the firm. All outgoing mail should be received and processed in the mailroom no later than 5:00 p.m. The mail must be checked to make sure it is sealed, has proper postage and international stamp. A messenger from the Building Messenger Center retrieves the mail between 5:15 and 5:30 and holds it at the Building Messenger Center to be picked up by "On the Fly" courier who delivers it to the U.S. Post Office. All international airmail packages weighing more than three (3) pounds must be delivered to a U.S. Postal agent in person. The copy center must be informed by 5:00 p.m. if such service is required.

#### Certified Mail

If proof of mailing is required for the certified mail, please complete the necessary forms for the Postal Service. Blank copies of those forms are available in the mailroom. The copy center must be informed by 5:00 p.m. if such service is required.

#### Express Mail

Express Mail Runs will be completed by a CSR in the evening at 6:00 p.m. The client should complete the necessary forms for the Postal Service and inform ARO by 5:30 p.m. If such service is required; however, this is usually a daily occurrence. Express mail must be received by the U.S. Post Office by 6:30 p.m. to guarantee next-day delivery. The Express Mail should have a client matter number and the name or initials of the sender for billing purposes. This information is recorded daily in a binder located by the mail machine in the copy center. Cab fare for express mail delivery to the Post Office is provided by the MH&M copy center manager. Ask for a cab fare receipt and, upon return, submit the receipt and change to the MH&M copy center manager or ARO manager on duty. The Post Office is located at the corner of Canal and Harrison (433 West Harrison). Take the escalators up to the second level – you may have to stand in line. Proceed to the teller, give them the envelope(s), they will process them and





# UNITED STATES PATENT AND TRADEMARK OFFICE

13879US01 TJM DSP  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,537	08/29/2001	Dayna Buskirk	RTI-143	7267

7590 12/15/2004

DONALD J. POCHOPIEN  
MCANDREWS, HELD, & MALLOY, LTD  
CITICORP CENTER, 34TH FLOOR  
500 WEST MADISON STREET  
CHICAGO, IL 60661

RECEIVED

JAN 18 2005

McANDREWS, HELD & MALLOY

EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RESPONSE DUE:  
Jan 15, 2005  
Final!



09942537

**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

**NOTICE OF DRAWING INCONSISTENCY WITH SPECIFICATION**

The drawings filed 8/29/01 have been received. However, an inconsistency exists between the drawings and the Brief Description of the Drawings in the specification.

Figures 1A are listed in the Brief Description of the Drawings in the specification but not contained in the Drawings.

Figures 1F are contained in the Drawings but not listed in the Brief Description of the Drawings in the specification.

Applicant is required to correct the above-noted inconsistency within a time period of **ONE MONTH or THIRTY (30) DAYS, whichever is longer**, from the mailing date of this Notice, or within the time remaining in the time period set forth in the Notice of Allowability (Form PTOL-37) to file corrected drawings, whichever is longer. **NO EXTENSION OF THIS TIME PERIOD MAY BE GRANTED UNDER EITHER 37 CFR 1.136 (a) OR (b)**

Failure to correct the above noted inconsistency will result in abandonment of the application.

The file will be held in the Publishing Division to await the correction of the inconsistency.

**Return Corrected Drawings/Specification to:**

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450

Alexandria, VA 22313-1450

Office of Patent Publication/Publishing Division  
Customer Service: 703-308-6789  
1-888-786-0101

## DOCKETING Checklist

### DAILY

- ☐ **Express Mail Receipts** – match receipts with file, notify High Density of files sent back to Secretary
- ☐ **Daily Docket (Patent & TM)** – Patent: distribute to KKM, NC, SM, CB, CLB. TM: distribute to MC  
Docket is run for following periods  
Monday – from previous Sat thru Tuesday  
Tuesday – Tuesday thru Wednesday  
Wednesday – Wednesday thru Thursday  
Thursday – Thursday thru Friday  
Friday – Friday thru next Monday
- ☐ **Daily JMM Docket - Email** to X-team  
Monday – from previous Saturday thru Tuesday  
Tuesday – Monday thru Wednesday  
Wednesday – Tuesday thru Thursday  
Thursday – Wednesday thru Friday  
Friday – Thursday thru next Monday
- ☐ **Incoming Mail** – open, date stamp and docket all incoming mail & faxes. Email incoming mail list to Fileroom
- ☐ **Missing Mail List** – update missing mail list with previous days mail and email to Fileroom
- ☐ **Outgoing Mail** – check and docket all USPTO mail
- ☐ **Daily Final Actions Due Report (Patent & TM)**– email to prosecution  
Monday – run from previous Saturday to Monday  
Tuesday to Friday – run for current day

### WEEKLY

- ☐ **Weekly Docket** - every Friday run docket report for Saturday thru to following Sunday.  
Print and Distribute via ARO to each attorney/secretary.  
Distribute via EMAIL to: Don Pochopien  
Janet McNicholas (and team)

### MONTHLY

- ☐ **Monthly Docket** - run on (or as near as) 28<sup>th</sup> of each month. Run for period 1<sup>st</sup> day of next month to the 31<sup>st</sup> day of the 2<sup>nd</sup> month (so covers two month period).  
Print and distribute via ARO to each attorney & secretary.  
Distribute via EMAIL to: Jan Wiley (Ed Remus/J Barich)  
Betsy Henschen (George Wheeler)  
Robert Fieseler

## **DOCKETING PROCEDURES - INCOMING USPTO MAIL**

### **POSTCARD**

- Enter application number

### **FILING RECEIPT**

- Change IPM Subs-status to Pending
- Check and compare IPM info relating to Serial number; Filing date; Title; Inventors; Projected publication date; and Priority data

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Status	FILED	First Filing Date	8/16/2004	National Filing Date
Sub Status	PENDING	Sub Status Date		Parent Tax Base Date
Parent Country	United States	Parent Filing Date	8/16/2004	Parent Expiration Date
Parent Number	60/602057	Parent Grant Date		
Application Number	10/926621	Application Date	8/26/2004	Tax Base Date
Patent Number		Grant Date		Next Tax Due Date
Publication Number		Publication Date		Expiration Date

- Verify foreign filing dates docketed (if appropriate)
- Mark file with application number and filing date
- Verify Status Inquiry at 18 months from filing date for regular cases, 12 months for continuations

### **CORRECTED FILING RECEIPT**

- Treat as original filing receipt; verify same info. Typically only need to amend projected publication date in actions tab

### **NOTICE OF OMITTED ITEM(S)**

- Enter & Complete Response Due [RES] two months from USPTO mail date
- Copy final due date into deadline field
- Specify in notes 'RESP TO NOT. OF OMITTED ITEM(S)'

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Action	Action Due Date	Deadline Date	Completed Date	Action Notes
RESPONSE DUE	12/25/2005	12/25/2005		RESP TO NOT. OF OMITTED ITEM(S)

- Stamp paper "Response Due" and mark due date
- Mark file with action and due date

### **MISSING PART(S)**

- Enter & complete Notice of Missing Parts – mail date (NMM) with PTO mail date and save.
- Copy final due date into deadline field for each due date

Inventors		Other Nos	Ext Files	Related Id	
Title		Text			
Action	Action Due Date	Deadline Date	Completed Date	Action Notes	
Notice of Missing Parts - Mail Date			10/25/2004		
Notice of Missing Parts Due	12/25/2004	5/25/2005			
Notice of Missing Parts - 1mo Extension	1/25/2005	5/25/2005			
Notice of Missing Parts - 2mo Extension	2/25/2005	5/25/2005			
Notice of Missing Parts - 3mo Extension	3/25/2005	5/25/2005			
Notice of Missing Parts - 4mo Extension	4/25/2005	5/25/2005			
Notice of missing parts - 2wk Final Reminder	5/11/2005	5/25/2005			
Notice of missing parts - 1wk Final Reminder	5/18/2005	5/25/2005			
Notice of Missing Parts - Final Deadline	5/25/2005	5/25/2005			

- Delete mail date action
- Stamp paper "Response Due" and mark due date
- Mark file with action and due date

### **NOTICE TO FILE CORRECTED APPLICATION PAPERS**

- Enter & complete File Corrected Appln Papers – mail date (FCM) with PTO mail date and save.
- Copy final due date into deadline field for each due date

Inventors		Other Nos	Ext Files	Related Id
Title	Text			
Action	Action Due Date	Deadline Date	Completed Date	Action Notes
File Corrected Appln Papers - Mail Date			10/25/2004	
File Corrected Appln Papers Due	12/25/2004	5/25/2005		
File Corrected Appln Papers - 1mo Extension	1/25/2005	5/25/2005		
File Corrected Appln Papers - 2mo Extension	2/25/2005	5/25/2005		
File Corrected Appln Papers - 3mo Extension	3/25/2005	5/25/2005		
File Corrected Appln Papers - 4mo Extension	4/25/2005	5/25/2005		
File Corrected Appln Papers - 2wk Final Reminder	5/11/2005	5/25/2005		
File Corrected Appln Papers - 1wk Final Reminder	5/18/2005	5/25/2005		
File Corrected Appln Papers - Final Deadline	5/25/2005	5/25/2005		

- Delete mail date action
- Stamp paper "Response Due" and mark due date
- Mark file with action and due date

### **REVISED PUBLICATION DATE**

- Change publication due date in Actions tab

### **NOTICE OF PUBLICATION OF APPLICATION**

- Change sub-status to Published [P]
- Add publication number and publication date in filing data tab.

Other Nos	Ex Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Status	FILED	First Filing Date	10/1/2003	National Filing Date
Sub Status	PUBLISHED	Sub Status Date		Parent Tax Base Date
Parent Country		Parent Filing Date		Parent Expiration Date
Parent Number		Parent Grant Date		
Application Number	09/000000	Application Date	10/1/2004	Tax Base Date
Patent Number		Grant Date		Next Tax Due Date
Publication Number	20040000000	Publication Date	10/25/2004	Expiration Date

- Complete Action Published [PUB] with publish date
- Verify that at least one action is open, if not add Status Inquiry
- Mark file with Published - no due date

### **ASSIGNMENT RECORDATION**

- Change "Assignment Made" to "Assignment Recorded" in filing data tab
- Check inventor's assignment date against IPM entry
- Verify that at least one action is open, if not add Status Inquiry
- Mark file with Assignment Recordation date, reel/frame numbe

### **ASSIGNMENT NON-RECORDATION**

- Docket Correction Requested [CRR] with due date – add "crct assgn" to notes field

Other Nos	Ex Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Action	Action Due Date	Deadline Date	Completed Date	Action Notes
CORRECTION REQUESTED	11/25/2004	11/25/2004		CRCT ASSIGNMENT

### **OFFICE ACTION / RESTRICTION REJECTION**

- Enter & complete "Restriction Mail Date" [RTM] with PTO mail date
- Copy final due date into deadline field for each due date
- Delete Status Inquiry

Inventors		Other Nos	Ext. Files		Related Id
Title	Text				
Action	Action Due Date	Deadline Date	Completed Date	Action Notes	
Restriction mail date			10/25/2004		
Restriction	11/25/2004	4/25/2005			
Restriction - 1st extension	12/25/2004	4/25/2005			
Restriction - 2nd extension	1/25/2005	4/25/2005			
Restriction - 3rd extension	2/25/2005	4/25/2005			
Restriction - 4th extension	3/25/2005	4/25/2005			
Restriction - 2wk Final Reminder	4/11/2005	4/25/2005			
Restriction - 1wk Final Reminder	4/18/2005	4/25/2005			
Restriction - final deadline	4/25/2005	4/25/2005			
*					

- Delete mail date action
- Stamp paper "Response Due" and mark due date
- Mark file with "Rest/Election" with PTO mail date and due date

### **NON-FINAL OFFICE ACTION**

- Enter & complete "Application Rejection" – Mail Date [REJ] with PTO mail date and save
- Copy final due date into deadline field for each due date
- Delete Status Inquiry

Inventors		Other Nos		Ext. Files		Related Id	
Title		Text					
Action		Action/Due Date	Deadline Date	Completed Date	Action/Notes		
Application Rejected - Mail Date				10/25/2004			
Rejection Response Due		1/25/2005	4/25/2005				
Rejection Response - 1mo		2/25/2005	4/25/2005				
Rejection Response - 2mo		3/25/2005	4/25/2005				
Rejection Response - 2wk Final		4/11/2005	4/25/2005				
Rejection Response - 1wk Final		4/18/2005	4/25/2005				
Rejection Response - Final		4/25/2005	4/25/2005				
*							

- Delete mail date action
- Stamp paper "Response Due" with PTO mail date and due date
- Mark file with "O/A" and due date
- Delete mail date action

### **FINAL OFFICE ACTION**

- Enter & complete "Final Rejection – Mail date" [FRJ] with PTO mail date
- Copy final due date into deadline field for each due date
- Delete Status Inquiry

Inventors	Other Nos	Ext Files	Related Id
Title	Text		
Action	Action Due Date	Deadline Date	Completed Date
Final Rejection - Mail Date			10/25/2004
Response to Provoke Advisory	12/25/2004	4/25/2005	
Final Rejection Due	1/25/2005	4/25/2005	
Appeal Due	1/25/2005	4/25/2005	
Final Rejection - 1mo Extension	2/25/2005	4/25/2005	
Appeal Due - 1mo Extension	2/25/2005	4/25/2005	
Final Rejection - 2mo Extension	3/25/2005	4/25/2005	
Appeal Due - 2mo Extension	3/25/2005	4/25/2005	
Final Rejection - 2wk Final	4/11/2005	4/25/2005	
Appeal Due - 2wk Final Reminder	4/11/2005	4/25/2005	
Final Rejection - 1wk Final	4/18/2005	4/25/2005	
Appeal Due - 1wk Final Reminder	4/18/2005	4/25/2005	
Final Rejection - Final Deadline	4/25/2005	4/25/2005	
Appeal Due - Final Deadline	4/25/2005	4/25/2005	

- Delete mail date action
- Stamp paper "Amendment" on mail with [Response to Provoke Advisory Action] date;  
Stamp Notice of Appeal on Mail with [Appeal Due] Date;
- Mark file with "Amendment" & "Notice of Appeal" with PTO mail date and due dates

### **ADVISORY ACTION**

- Enter & complete "Advisory Action Received" [ADA] with PTO mail date
- Overwrite any Action notes with "Resp. to Adv Action Due" and specify in the one week and 2 week reminders and final deadline notes "File RCE, Con., or Notice of Appeal

Other Nos	Ext Files	Related Id	Title	Text
Filing Data	Related Party Info	Actions	Description	Inventors
Action	Action Due	Deadline	Completed	Action Notes
Response to Provoke Advisory	9/29/2004	1/29/2005	9/29/2004	
Final Rejection Due	10/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Appeal Due	10/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Final Rejection - 1mo Extension	11/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Appeal Due - 1mo Extension	11/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Final Rejection - 2mo Extension	12/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Appeal Due - 2mo Extension	12/29/2004	1/29/2005		RESP TO ADV ACTION DUE
Final Rejection - 2wk Final	1/15/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL! RESP TO ADV
Appeal Due - 2wk Final	1/15/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL! RESP TO ADV
Final Rejection - 1wk Final	1/22/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL! RESP TO ADV
Appeal Due - 1wk Final	1/22/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL! RESP TO ADV
Final Rejection - Final Deadline	1/29/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL! RESP TO ADV
Appeal Due - Final Deadline	1/29/2005	1/29/2005		FILE CONTINUATION, RCE OR NTC OR APPEAL! RESP TO ADV

- Stamp "Response Due" with Final Rejection Due Date;
- Mark file with "Advisory Action" with Final Rejection. Due date (if Advisory Action received after Final date past then stamp with next available extension, noting extension was included)



### **EX-PARTE QUAYLE OFFICE ACTION**

- Enter & complete "Ex-Parte Quayle Mail date" [XPM] with PTO mail date
- Copy final due date into deadline field for each due date

Inventors		Other Nos		Ext Files		Related Id	
Title		Text					
Action	Action Due	Deadline	Completed Date	Action Notes			
Ex-parte quayle mail date			12/5/2004				
Ex-parte quayle	2/5/2005	6/5/2005					
Ex-parte quayle - 1st extensio	3/5/2005	6/5/2005					
Ex-parte quayle - 2nd extensio	4/5/2005	6/5/2005					
Ex-parte quayle - 3rd extensio	5/5/2005	6/5/2005					
Ex-parte quayle - 2wk Final Reminder	5/22/2005	6/5/2005					
Ex-parte quayle - 1wk Final Reminder	5/29/2005	6/5/2005					
Ex-parte quayle - final deadli	6/5/2005	6/5/2005					

- Delete mail date action
- Stamp "Response Due" on mail with due date
- Mark file with "Ex-Parte Quayle" with PTO mail date and due date

### **NOTICE OF NON-COMPLIANT AMENDMENT**

- Determine whether our response was a Preliminary Amendment or a Response to Final O/A amendment
- Manually docket One Month OR One month with 5 extensions, dependent on type of amendment filed.
- Delete Status Enquiry

### **NOTICE OF ALLOWANCE**

- Change sub-status to Allowed "A"
- Enter & complete "Notice of Allowance" [NOA] with PTO mail date
- If Drawings required enter "Drawings Due" [DRG] with same due date as Issue Fee Due
- Copy Issue Fee due date into deadline field for each due date

Inventors		Other Nos		Ext Files		Related Id	
Title		Text					
Action	Action Due	Deadline	Completed Date	Action Notes			
Notice of allowance			12/5/2004				
PTA Review	1/4/2005						
Reminder issue fee due - 1mo Reminder	2/5/2005	3/5/2005					
312 Amendment - 1mo Reminder	2/5/2005	3/5/2005					
Reminder issue fee due - 2wk Final	2/19/2005	3/5/2005					
Reminder issue fee due - 1wk Final	2/26/2005	3/5/2005					
ISSUE FEE DUE	3/5/2005	3/5/2005					
AMENDMENT AFTER ALLOWANCE	3/5/2005	3/5/2005					
DRAWINGS REQUIRED OR DUE	3/5/2005	3/5/2005					

- Stamp "Response Due" on mail with Issue fee due date, and Drawings if necessary
- Mark file with "Issue Fee" "Drawings" with PTO mail date and due dates

- If Broadcom case also docket file "Continuation Patent Application" [CPA], with due date being date Issue Fee is due
- Delete Mail date

## **ISSUE NOTIFICATION**

- Insert Issue Date and patent number in filing data tab
- Complete "Check on Issue Date" [COI] with issue date as per PTO notice
- Enter "Patent Issues/No Act" [PAT] with issue date

Inventors		Other Nos		Ext Files		Related Id	
Title		Text					
Action		Action Due	Deadline	Completed Date	Action Notes		
CHECK ON ISSUE DATE		12/20/2004		12/20/2004			
PAT. ISSUES /NO ACT REQ'D		12/20/2004					
Maintenance Fee - 3.5 year		6/20/2008					
Maintenance Fee - 7.5 year		6/20/2012					
Maintenance Fee - 11.5 year		6/20/2016					
*							

- Check IP Master Fee Schedule to ensure all tax dates generated

Fee Schedule and History					
	TaxYear	Next Tax Date	ProjectedDue	DropDate	AmountPaid
▶	4	6/20/2008		12/20/2008	
	8	6/20/2012		12/20/2012	
	12	6/20/2016		12/20/2016	
*					

- Stamp "Response Due" with date for all Maintenance Fees
- Mark file with Issue Date, Patent number and Maintenance fees due

## **ISSUED PATENT**

- Change sub-status to "Issued" [G]
- Complete "Pat. Issues/No Act Req'd" [PAT] with issue date
- Check and compare patent number & issue date with IP Master data

Inventors		Other Nos		Ext Files		Related Id	
Status	GRANTED	First Filing Date	10/1/2003	National Filing Date			
Sub Status	ISSUED	Sub Status Date		Parent Tax Base Date			
Parent Country		Parent Filing Date		Parent Expiration Date			
Parent Number		Parent Grant Date					
Application Number	09/000000	Application Date	10/1/2004	Tax Base Date	6/20/2005		
Patent Number	66666666	Grant Date	12/20/2004	Next Tax Due Date	6/20/2008		
Publication Number	2004000000	Publication Date	10/25/2004	Expiration Date	10/1/2024		

- Check and compare patent number & issue date marked on file cover

## **SOFT COPIES**

- Enter & complete "Soft Copies" [SOF] with today's date
- Check patent number & issue date against IPM data and file cover

## **MAINTENANCE FEE STATEMENT**

- Within FEE SCHEDULE TAB:  
Paid date should have been entered on day of payment, if not complete date  
Check "RECEIPT" box

Fee Schedule and History									
TaxYear	NextTaxDate	DropDate	AmountPaid	PaidDate	AuthorizedDate	Invoice	LetterDate	Receipt	If
4	6/20/2008	12/20/2008		5/20/2008				<input checked="" type="checkbox"/>	
8	6/20/2012	12/20/2012						<input type="checkbox"/>	
12	6/20/2016	12/20/2016						<input type="checkbox"/>	

If asked to update next annuity, select "yes"

**Confirm Payment** ✖

Do you want to mark this tax year as PAID?

NOTE: Choosing 'Yes' will mark this record as PAID.  
NO PAYMENTS will be selected as due for payment ON or BEFORE this tax year.

## **NOTICE OF ABANDONMENT**

- Change Status to "Inactive" [I] –
- **Note:** If sub-status did not previously show Abandoned & there is no indication of intentional abandonment do not change Status to "Inactive" until Attorney review.

Inventors	Other Nos	Ext. Files	Related Id
Title	Text		
Status	INACTIVE <input checked="" type="checkbox"/>	First Filing Date	10/1/2003
Sub Status	ABANDONED <input checked="" type="checkbox"/>	Sub Status Date	
Parent Country	<input checked="" type="checkbox"/>	Parent Filing Date	
Parent Number		Parent Grant Date	
Application Number	09/000000	Application Date	10/1/2004
Patent Number		Grant Date	
Publication Number	20040000000	Publication Date	10/25/2004
		Tax Base Date	
		Next Tax Due Date	
		Expiration Date	

- Enter & Complete "Abandoned" [ABN] with PTO mail date

Inventors		Other Nos		Ext Files		Related Id	
Title		Text					
Action	Action Due	Deadline	Completed Date	Action Notes			
ABANDONED			12/5/2004				

- Enter reason for abandonment in description tab
- Stamp "ABANDONED" on file

### **NOTICE OF EXPIRATION**

- Change Status to "Inactive" [I] and sub-status to "Expired" [X]

Other Nos		Ext Files		Related Id		Title		Text	
Filing Data		Related Party Info		Actions		Description		Inventors	
Status	INACTIVE			First Filing Date	10/1/2003	National Filing Date			
Sub Status	EXPIRED			Sub Status Date		Parent Tax Base Date			
Parent Country				Parent Filing Date		Parent Expiration Date			
Parent Number				Parent Grant Date					
Application Number	09/000000			Application Date	10/1/2004	Tax Base Date	6/20/2005		
Patent Number	6666666			Grant Date	12/20/2004	Next Tax Due Date	6/20/2012		
Publication Number	20040000000			Publication Date	10/25/2004	Expiration Date	10/1/2024		

- Enter & complete "Expired" [EXP] with PTO mail date
- Enter reason for expiration in Description Tab.

Other Nos		Ext Files		Related Id		Title		Text	
Filing Data		Related Party Info		Actions		Description		Inventors	
Action	Action Due	Deadline	Completed Date	Action Notes					
ABANDONED			12/5/2004						
EXPIRATION			10/1/2024	patent term expired					
Maintenance Fee - 3.5 year	6/20/2008		5/20/2008						
Maintenance Fee - 7.5 year	6/20/2012		6/20/2012						
Maintenance Fee - 11.5 year	6/20/2016		6/20/2016						

## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Wednesday, January 19, 2005 2:38 PM  
**To:** 'mbaker@rtix.com'  
**Cc:** 'bsanders@rtix.com'  
**Subject:** FW: 13879US01



SCN\_20050119135  
824\_001.pdf

i Maurie:

A problem arose in this application in which the claims were allowed and in which the issue fee was paid on 12/14/04. On 12/15/04, after the payment of the issue fee, the PTO objected for the first time to the original figures filed in 2001. I suspected that the Figures might be an issue because the latter were hand drawn. In the meantime, I ordered formal drawings from a draftsman for the newly filed 13879US02 application. We have these in house.

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How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh  
Sent: Wednesday, January 19, 2005 1:59 PM  
To: Don Pochopien  
Subject: SCN\_20050119135824\_001.pdf

## Don Pochopien

---

**From:** mbaker@rtix.com  
**Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01



ENVELOPE.TXT

Don,

I will need to get some internal guidance on this one to get you a definitive answer. I have two questions/comments for you in the meantime...

(1) Do you think that the first option you mention below (petition to revive an unintentionally abandoned application) would get us the patent sooner? Based on my experience, I would definitely say yes, as a new filing, even a continuation, can linger without examination for at least a year. Petitions can be slow, but not that slow usually. Also we take the chance of getting a different examiner and/or the examiner changing their mind.

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If you could provide me your input, that would be really helpful.

Thanks,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
Sent: Wednesday, January 19, 2005 3:39 PM  
To: Maurie Baker  
Cc: Ben Sanders  
Subject: FW: 13879US01

Hi Maurie:

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From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM

To: Don Pochopien

Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
dpochopien@MHMLAW.COM

\*\*\*\*\*

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\*\*\*\*\*

## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Wednesday, January 19, 2005 4:01 PM  
**To:** 'mbaker@rtix.com'  
**Subject:** RE: 13879US01

Hi Maurie:

The additional costs would relate to the cost of drafting the petition, and documenting our internal docketing as part of the petition. If we file it with an IDS up front, it seems to go faster.

There is a diligence requirement or reviving. Hence, we also need to establish that MHM and RTI acted diligently in seeking revival once we learned of the abandonment.

Donald

-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com]  
**Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01

Don,

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Thanks,

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Registered Patent Agent # 56,090  
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Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Wednesday, January 19, 2005 3:39 PM  
**To:** Maurie Baker  
**Cc:** Ben Sanders  
**Subject:** FW: 13879US01

Hi Maurie:

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Donald

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From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM

To: Don Pochopien

Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien

dpochopien@MHMLAW.COM

\*\*\*\*\*

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<< File: ENVELOPE.TXT >>

## Don Pochopien

---

**From:** mbaker@rtix.com  
**Sent:** Thursday, January 20, 2005 8:49 AM  
**To:** Don Pochopien  
**Subject:** RE: 13879US01



ENVELOPE.TXT

Yes, that all makes sense. Thanks a lot for the further info.

So, based on the requirements you mentioned, do you also think that it would take just as long to go this route (as opposed to a new filing)?

I know that one of the factors in the decision will be how quickly can we get the patent granted.

I am just trying to get all of our options fully laid out to present to upper management.

Lastly, is there a time frame for this decision? Please let me know.

Thanks again,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
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11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Wednesday, January 19, 2005 5:01 PM  
**To:** Maurie Baker  
**Subject:** RE: 13879US01

Hi Maurie:

The additional costs would relate to the cost of drafting the petition, and documenting our internal docketing as part of the petition. If we file it with an IDS up front, it seems to go faster.

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-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com] **Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01

Don,

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Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
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-----Original Message-----

From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
Sent: Wednesday, January 19, 2005 3:39 PM  
To: Maurie Baker  
Cc: Ben Sanders  
Subject: FW: 13879US01

Hi Maurie:

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How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM  
To: Don Pochopien  
Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
dpochopien@MHMLAW.COM

\*\*\*\*\*

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\*\*\*\*\*

## Don Pochopien

---

**From:** Don Pochopien  
**Sent:** Thursday, January 20, 2005 9:21 AM  
**To:** 'mbaker@rtix.com'  
**Subject:** RE: 13879US01

Hi Maurie:

Petitions in the PTO take 3 to 6 months before being granted. There is a 98% likelihood that it would be granted. The new continuation application would take 3-6 months to get a response from the PTO. There is about a 80% likelihood that there would be a first action allowance. The difference is that it would cost about \$2,000-3,000 to prepare the petitions. I could file the new application today. It would take me until next week to prepare the petitions and file them.

Donald

-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com]  
**Sent:** Thursday, January 20, 2005 8:49 AM  
**To:** Don Pochopien  
**Subject:** RE: 13879US01

Yes, that all makes sense. Thanks a lot for the further info.

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I am just trying to get all of our options fully laid out to present to upper management.

Lastly, is there a time frame for this decision? Please let me know.

Thanks again,

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Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Wednesday, January 19, 2005 5:01 PM  
**To:** Maurie Baker  
**Subject:** RE: 13879US01

Hi Maurie:

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-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com] **Sent:** Wednesday, January 19, 2005 3:53 PM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** RE: 13879US01

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11621 Research Circle  
Post Office Box 2650  
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Phone: 386-418-8888 x 4262

Email: mbaker@rtix.com

Website: www.rtix.com

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From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]

Sent: Wednesday, January 19, 2005 3:39 PM

To: Maurie Baker

Cc: Ben Sanders

Subject: FW: 13879US01

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To: Don Pochopien

Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
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<< File: ENVELOPE.TXT >>

## Don Pochopien

---

**From:** mbaker@rtix.com  
**Sent:** Monday, January 24, 2005 10:58 AM  
**To:** Don Pochopien  
**Cc:** bsanders@rtix.com  
**Subject:** Instructions: 13879US01



ENVELOPE.TXT

Don,

This is the unintentionally abandoned case.

After meeting with the management here and discussing the different options for this case, we have decided to go the petition route. I realize it will take you some time to get the petition together. Please give me an idea of when to expect it, if you can.

Also, we would like to have a chance to look at the petition before you file it please.

Thank you very much,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090  
Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262

Email: mbaker@rtix.com

Website: www.rtix.com

-----Original Message-----

**From:** dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
**Sent:** Thursday, January 20, 2005 10:22 AM  
**To:** Maurie Baker  
**Subject:** RE: 13879US01

Hi Maurie:

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-----Original Message-----

**From:** mbaker@rtix.com [mailto:mbaker@rtix.com] **Sent:** Thursday, January 20, 2005 8:49 AM  
**To:** Don Pochopien  
**Subject:** RE: 13879US01

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Registered Patent Agent # 56,090 Regeneration Technologies, Inc.



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Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
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From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
Sent: Wednesday, January 19, 2005 5:01 PM  
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Cc: bsanders@rtix.com  
Subject: RE: 13879US01

Don,

I will need to get some internal guidance on this one to get you a definitive answer. I have two questions/comments for you in the meantime...

(1) Do you think that the first option you mention below (petition to revive an unintentionally abandoned application) would get us the patent sooner? Based on my experience, I would definitely say yes, as a new filing, even a continuation, can linger without examination for at least a year. Petitions can be slow, but not that slow usually. Also we take the chance of getting a different examiner and/or the examiner changing their mind.

(2) I am a little confused on the cost issue. It appears to me that the petition route would cost much less in PTO fees (a little more than half as much), although maybe it is a lot more work for you guys and that makes the difference. Sorry but I don't know that much about your cost structure.

If you could provide me your input, that would be really helpful.

Thanks,

Maurie G. Baker, Ph.D.  
Registered Patent Agent # 56,090 Regeneration Technologies, Inc.  
11621 Research Circle  
Post Office Box 2650  
Alachua, FL 32616-2650

Phone: 386-418-8888 x 4262  
Email: mbaker@rtix.com  
Website: www.rtix.com

-----Original Message-----

From: dpochopien@mhmlaw.com [mailto:dpochopien@mhmlaw.com]  
Sent: Wednesday, January 19, 2005 3:39 PM  
To: Maurie Baker  
Cc: Ben Sanders  
Subject: FW: 13879US01

Hi Maurie:

A problem arose in this application in which the claims were allowed and in which the issue fee was paid on 12/14/04. On

12/15/04, after the payment of the issue fee, the PTO objected for the first time to the original figures filed in 2001. I suspected that the Figures might be an issue because the latter were hand drawn. In the meantime, I ordered formal drawings from a draftsman for the newly filed 13879US02 application. We have these in house.

On 01/18/05 (yesterday), our docketing department first received the written objection dated 12/15/04 (See the attachment). I do not know how or why it took so long to arrive. However, it only had a 30 day period in which to respond that was not extendable. Hence, the application has gone abandoned. If the communication would have been dated 12/16, we would have lucked out with the weekend and MLK holiday, and could have filed it yesterday.

Course of Action:

We could draft a petition and/or Request to reinstate an unintentionally abandoned application with submission of new figures and an amendment under 1.312 correcting the numbering in the Brief Description of the Figures.

Alternatively, we have a pending continuation application. We could file another continuation application with a preliminary amendment and the new Figures. I believe that the refiling would be more cost effective. In the preliminary amendment, we could advise the Examiner as to what had occurred. I expect that we would get a Notice of Allowance if we get the same Examiner.

How should we proceed?

Donald

-----Original Message-----

From: Patricia Walsh Sent: Wednesday, January 19, 2005 1:59 PM  
To: Don Pochopien  
Subject: SCN\_20050119135824\_001.pdf

Donald Pochopien  
dpochopien@MHMLAW.COM

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Donald Pochopien  
dpochopien@MHMLAW.COM

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ATTORNEY DOCKET NO. RTI 143 /1915-13879US01

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

In the Application of:

Buskirk, et al.

Serial No.: 09/942,537

Filed: August 29, 2001

For: "Soft and Calcified Tissue  
Implants"

Group Art Unit: 3738

Examiner: Alvin J. Stewart

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. BOX 1450, Arlington, VA 22313-1450, on this date:

January 27, 2005

Donald J. Pochopien  
Registration No. 32,167  
Attorney for Applicants

AMENDMENT AFTER PAYMENT OF THE ISSUE FEE

Mail Stop Petition  
Commissioner for Patents  
P.O. BOX 1450  
Arlington, VA 22313-1450

Sir:

After payment of the Issue Fee on 12/14/04 and responsive to the Official Communication of 12/15/04, for which a substitute figure and amendments were due 01/15/05, and for which no extensions of time were possible, Applicants make the following amendments to the Brief Description of the Figures that were requested in the Official Communication:

Amendments to the Specification: page 2

Remarks: page 3

Delete the paragraph at page 4, lines 2-5 of the specification [i.e., ¶¶ 13-15 of the published application] and substitute therefor the following paragraphs:

~~FIG. 1 shows~~ FIGS. 1A-1F show diagrams depicting different shapes and constructions of an implant in accordance with the subject invention.

FIG. 1A shows a bone-tendon-bone type implant.

~~FIGS. 1B-E represent~~ FIGS. 1B-1F provide views of an implant comprising a specific assembled bone block.

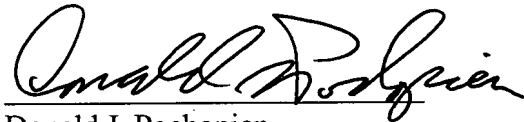
## REMARKS

The amendments to the specification do not add new matter. As requested in the Official Communication dated 12/15/04, the amendment to the description of FIGS 1A – 1F, now properly refers to the appropriately labeled figures.

Respectfully submitted,

MCANDREWS, HELD & MALLOY, LTD.

By



Donald J. Pochopien

Registration No. 32,167

Attorney of Record

500 West Madison, 34th Floor

Chicago, Illinois 60661

(312) 775-8133

Dated: January 27, 2005

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